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July 15, 2004

OF COUNSEL:
BURKE FOSSEE, III, P.C.

Clerk of the Court
Ingham County Circuit Court
315 South Jefferson
Mason, MI 48854-1651

Re: Linda A. Watters, Commissioner, Office of Financial and
Insurance Services for the State of Michigan v The Wellness Plan
File No. 03-1127-CR

Dear Clerk:

Enclosed for filing is Response of McLaren Heath Plan, Inc. to Objections of GAMBRO Healthcare, Inc. to the Rehabilitator's Petition for Approval of the Rehabilitator's Plan to Sell the Right to Serve the Members of the Wellness Plan and Proof of Service on the Rehabilitator, Molina Healthcare of Michigan and GAMBRO Healthcare.

Thank you for your attention in this matter.

Very truly yours,

PAYNE, PAYNE, BRODER & FOSSEE, P.C.

Carol L. Fossee

Carol L. Fossee

CLF\ssj

Enclosures

cc: William A. Chenoweth, Esq.
Nancy L. Lukey, Esq.
Dykema Gossett, PLLC

DEPT. OF
ATTORNEY GENERAL

JUL 16 2004

INSURANCE & BANKING
RECEIVED

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30th JUDICIAL DISTRICT
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,
OFFICE OF FINANCIAL AND INSURANCE
SERVICES FOR THE STATE OF MICHIGAN,

Petitioner,

v.

Case No. 03-1127-CR
Hon. William E. Collette

THE WELLNESS PLAN,
a Michigan Health Maintenance Organization,

Respondent.

E. JOHN BLANCHARD (P28881)
WILLIAM A. CHENOWETH (P27622)
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PROOF OF SERVICE

The undersigned certifies, under penalty of perjury that the *Response of McLaren Health Plan, Inc. to Objections of GAMBRO Healthcare, Inc. to the Rehabilitator's Petition for Approval of the Rehabilitator's Plan to Sell the Right to Serve the Members of the Wellness Plan* was served up on the following parties:

The Rehabilitator in care of:
William A. Chenoweth, Esq.
Assistant Attorney General
Insurance & Banking Division
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Lansing, MI 48913

Molina Healthcare of Michigan
in care of:
Nancy L. Lukey, Esq.
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GAMBRO Healthcare, Inc.

in care of:

Lori McAllister, Esq.

John Ferroli, Esq.

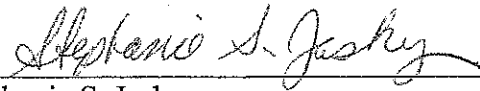
Kathrin E. Kudner, Esq.

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124 West Allegan Street, Suite 800

Lansing, MI 48933-1742

on the 15th day of July, 2004 via overnight courier and U.S. Mail.



Stephanie S. Jasky

**Payne, Payne,
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**RESPONSE OF McLAREN HEALTH PLAN, INC.
TO OBJECTIONS OF GAMBRO HEALTHCARE, INC.
TO THE REHABILITATOR'S PETITION
FOR APPROVAL OF THE REHABILITATOR'S PLAN
TO SELL THE RIGHT TO SERVE THE MEMBERS OF THE WELLNESS PLAN**

I. INTRODUCTION

McLaren Health Plan, Inc. files this Response to the Objections of GAMBRO Healthcare, Inc. ("GAMBRO") in the above-captioned case to **the Rehabilitator's Petition for Approval of the Rehabilitator's Plan to Sell the Right to Serve the Members of the**

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Wellness Plan (the "Petition"). In her Petition, filed on April 23, 2004, the Rehabilitator proposed to sell the right to serve the members of The Wellness Plan, a Michigan health maintenance organization ("TWP") that was placed into rehabilitation by an Order of Rehabilitation by this Court on July 1, 2003 (the "Rehabilitation Date"). The Rehabilitator's proposal in the Petition is to sell to McLaren Health Plan, Inc. ("McLaren") the right to serve TWP members in Genesee and Lapeer Counties and to sell to Molina Healthcare of Michigan, Inc. ("Molina") the right to serve TWP members in the remainder of Michigan.

GAMBRO filed objections to the Petition, asserting that (1) GAMBRO has not been paid for its medical services rendered to TWP members after the Rehabilitation Date, and (2) the Rehabilitator has failed to provide GAMBRO and other creditors with sufficient information to determine whether the proposal contained in the Petition is fair and reasonable under the circumstances.

In its objections, GAMBRO seeks to have this Court modify the Plan, so that (i) GAMBRO will be paid for its services to TWP members rendered since the Rehabilitation Date, and (ii) claims for services rendered after the Rehabilitation Date will be paid before claims for services rendered before the Rehabilitation Date.

McLaren responds to the GAMBRO objections, saying that (a) the GAMBRO objections do not respond to the proposal for sale contained in the Petition, because the objections relate only to use of the funds generated by the proposed sale(s), not to whether the proposed sale(s) are objectionable, and (b) the purchase by McLaren proposed by the Rehabilitator affords to TWP and interested parties – members, creditors, and the public – the greatest return available for the TWP assets to be purchased by McLaren.

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II. THE GAMBRO OBJECTIONS DO NOT ADDRESS THE ISSUES RAISED IN THE PETITION.

The Rehabilitator filed the Petition, asking for the approval of the Court of the sale of the specified TWP assets to Molina and to McLaren. The Petition describes the events and circumstances that led to the proposed sales to Molina and McLaren – the appointment of the Rehabilitator, the statutory authority of the Rehabilitator, the failure of an earlier offer to sell assets of TWP, and the process by which the Rehabilitator solicited offers to purchase the right to serve TWP members (the “Membership Rights”). The Petition also describes the criteria used by the Rehabilitator to evaluate bids, and the Rehabilitator’s analysis of the bids received.

The Petition seeks the approval of the Court for the proposed sale of the TWP Membership Rights to Molina and to McLaren. The Petition describes to the Court that the members of TWP are principally Medicaid recipients.¹ Medicaid recipients may be served only an HMO that has a contract with the Michigan Department of Community Health (the “MDCH”) to provide services to Medicaid recipients. On March 23, 2004, the MDCH issued an Invitation to Bid with respect to serving Medicaid patients, beginning October 1, 2004, for the next two years, or until September 30, 2006.

The MDCH did not select TWP for a contract to serve Medicaid patients during the two years, beginning October 1, 2004. The Rehabilitator, who was uniquely knowledgeable about the financial condition of TWP, knew that TWP would not qualify to receive a Medicaid contract

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¹ TWP filed its required Health Annual Statement with the Office of Financial and Insurance Services for the year ending December 31, 2003 in April 2004. The Health Annual Statement reflected that for 2003 the total TWP membership was 110,453, and of these 103,458 or 93.7% were Medicaid recipients. For calendar year 2002, the Medicaid membership represented 89.9% of TWP’s total membership.

from the DCH. TWP did not qualify for a Medicaid contract, because TWP could not satisfy the statutorily-required financial qualifications necessary to secure a contract from the MDCH.

Without a Medicaid contract, TWP will not be entitled to serve its Medicaid members as of October 1, 2004; those members will be required to select, or will be assigned to, a different HMO to provide them with health care services. TWP will not, consequently, receive premiums for the vast majority of its membership after October 1, 2004.

TWP has few assets, except its Membership Rights and the premiums TWP receives in conjunction with exercising the Membership Rights. TWP will lose its Membership Rights for Medicaid recipients by operation of law as of October 1, 2004. TWP will receive no compensation for the loss. The Petition seeks to sell the TWP Membership Rights for the Medicaid members, these principal assets of TWP, for the greatest return to creditors and for the greatest benefit to members and to the public, before the assets no longer are TWP's to sell.

Through its order of April 30, 2004, this Court approved the Rehabilitator's plan to sell assets of TWP, including TWP's Membership Rights, to Amerigroup Michigan, Inc. When that sale did not take place, this Court determined, as represented in its order of May 11, 2004, that the Rehabilitator was nevertheless authorized to sell the Membership Rights. The Court was satisfied that such a sale would be in the best interests of TWP's creditors and of the public.

The Petition puts before the Court the Rehabilitator's best judgment about the sale of the TWP Membership Rights. The Rehabilitator selected Molina and McLaren, for the reasons described in the Petition. The Petition asks the Court to approve the sale to Molina and McLaren. The Petition does not address the distribution of proceeds of the proposed sale to Molina and McLaren.

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The GAMBRO objections do not challenge the Rehabilitator's judgment about the sale to Molina and McLaren; the GAMBRO objections are no more than an attempt to secure a portion of the proceeds of the sale to pay GAMBRO the amount of its claims. GAMBRO seeks to change the Petition into a proceeding different from that requested of the Court. The Petition does not ask the Court to address individual claims or even to determine the disposition of the proceeds of the proposed sale. The GAMBRO objections are accordingly not appropriate in the context of this hearing.²

III. THE PURCHASE BY McLAREN PROPOSED BY THE REHABILITATOR AFFORDS TO TWP AND INTERESTED PARTIES THE GREATEST RETURN FOR THE TWP MEMBERSHIP RIGHTS IN GENESEE AND LAPEER COUNTIES.

GAMBRO's objections express GAMBRO's concern that it will not be paid for services to TWP Medicaid members. Yet GAMBRO's objections are made in the context of apparent lack knowledge or intentional disregard about the financial condition of TWP – about its assets or its liabilities. The Petition describes all of the bids that were made for the purchase of the TWP Membership Rights. Bids were required to be for Membership Rights for all TWP members in a county for which a bid was submitted. Six bids were submitted to purchase the Membership Rights.

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² Presumably, the determination of the disposition of the proceeds will be made when the proceeds are a reality. Further, and presumably, the Rehabilitator will review all claims to ensure that the claims are properly submitted and are payable. GAMBRO's objections merely assume that GAMBRO's claims are properly submitted and payable.

Each of the bids was made or was analyzed by the Rehabilitator on the basis of the price per member that was being offered.³ McLaren's bid equated to \$325 per member for Membership Rights in Genesee and Lapeer Counties. No other bid for any Membership Rights was as high as McLaren's.⁴

Certainly, the TWP membership in Lapeer and Genesee Counties is not as large as the TWP membership in, for example, Wayne or Oakland Counties. Nevertheless, no other bid for Membership Rights in any other county was as high on a per-member basis. The closest bid to McLaren's was \$286.94 per member in Muskegon and Oceana Counties.

No other bid for the Membership Rights in Lapeer and Genesee Counties was comparable to McLaren's bid. While McLaren offered \$325 per member, other offers in these counties were \$248.39 per member (by Molina); \$217.00 per member (by Total Health Care); and \$50.00 per member (by Health Care of Michigan).

McLaren was the indisputable choice for the Membership Rights in Lapeer and Genesee Counties, strictly on the basis of the dollars that would come to TWP in the sale. McLaren not only submitted the highest offer, but McLaren has the financial resources to ensure its ability to consummate the sale and to continue as a responsible HMO for the (former) TWP members.⁵

³ Factors such as the continuity of care for the TWP members and the likelihood of approvals from regulatory agencies, were also considered, but for purposes of this Response, only the purchase price is entirely relevant.

⁴ Even the ultimately-cancelled offer by AMERIGROUP Michigan, Inc. ("AMERIGROUP") was for a total purchase price, which if divided by the TWP membership, equated to only \$368.00 per member. However the AMERIGROUP total purchase price was not solely for Membership Rights; the purchase price included the sale of the TWP HMO license, the TWP Medicaid contract with the MDCH, and all of the TWP provider agreements. McLaren purchases only the Membership Rights; McLaren supplies its own HMO license, its own Medicaid contract, and its own provider agreements.

⁵ In addition, McLaren's provider network already overlaps the TWP network in Genesee County by 97% and in Lapeer County by 100%. The result is that the change to McLaren as their HMO will cause very few TWP members to make any change in their health care providers.

McLaren has agreed to pay the full purchase price for these Membership Rights, immediately upon the transfer of the Rights.

GAMBRO objects to the proposed sale to McLaren of the Membership Rights in Lapeer and Genesee Counties, but gives no substantive reason for which the sale to McLaren will not be in the best interests of creditors, including GAMBRO. GAMBRO's objections suggest no alternative method by which TWP will be able to realize any return for its Membership Rights. McLaren proposes to provide TWP a substantial return for these assets.

The GAMBRO objections are not in the best interests of even GAMBRO itself and clearly not in the best interests of TWP's other creditors, TWP's members, or the public. Without the purchase by McLaren of the Membership Rights in Genesee and Lapeer Counties (and without the sale of the TWP Membership Rights in other counties), TWP may not be in a position to pay GAMBRO even for its properly-submitted claims.

IV CONCLUSION

For all of the reasons stated above, McLaren Health Plan, Inc. respectfully requests that this Court enter an order, confirming the Rehabilitator's proposal, as contained in the Petition, to sell to McLaren Health Plan, Inc. the right to serve the members of The Wellness Plan in Genesee and Lapeer Counties, in accordance with the McLaren proposal, submitted to the Rehabilitator on May 11, 2004.

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Respectfully submitted,
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